

**Jerry Rudibaugh  
Municipal Tax Hearing Officer**

**DECISION OF MUNICIPAL TAX HEARING OFFICER**

Decision Date: June 1, 2004

Decision: MTHO #146

Tax Collector: City of Phoenix

Hearing Date: January 15, 2004

**DISCUSSION**

**Introduction**

On October 22, 2003, **ABC** Restaurant Inc. dba **Taxpayer** ("Taxpayer") filed a protest of a tax assessment made by the City of Phoenix ("City"). After review, the City concluded on October 24, 2003 that the protest was timely and in proper form. On October 29, 2003, the Municipal Tax Hearing Officer ("Hearing Officer") ordered the City to file a response to the protest on or before December 5, 2003. On November 5, 2003, the City filed a response. On November 10, 2003, the Hearing Officer ordered the Taxpayer to file any reply on or before December 1, 2003. The Taxpayer filed a reply on November 28, 2003. On December 2, 2003, a Notice of Tax Hearing ("Notice") was issued setting the matter for hearing commencing on January 15, 2004. Both parties appeared and presented evidence at the January 15, 2004 hearing. On January 16, 2004, the Hearing Officer issued a letter indicating the Taxpayer would provide additional documentation requested by the City on or before January 29, 2004; the City would provide any recommendations/comments to the additional documentation as well as any legal arguments on or before March 1, 2004; and, the Taxpayer would provide any reply on or before April 1, 2004. The Taxpayer provided additional documentation on January 27, 2004. The City filed its recommendations and legal arguments on March 1, 2004. On April 15, 2004, the Hearing Officer issued a letter indicating the Taxpayer had not filed a reply and as a result, the record was closed and a written decision would be issued on or before May 31, 2004.

**City Position**

On June 24, 2002, the Taxpayer obtained a restaurant, located at \_\_\_\_\_ Street from **Owner A (Mr. A)**. **Mr. A** applied for a City Privilege License on May 31, 2001, and cancelled the license on June 23, 2002. **Mr. A** did not file tax returns for the period August 2001 to June 23, 2002 and the City was unsuccessful in contacting **Mr. A**. On August 27, 2003, the City mailed preliminary work papers to **Mr. B**, President of the Taxpayer, as the business successor. The City estimated the monthly taxable revenues for the period August 2001 through June 23, 2002 and assessed the Taxpayer for taxes due in the amount of \$14, 087.59, plus interest. The City utilized the tax returns filed from May 2001 to July 2001 by **Mr. A** to make an estimate for the audit period. The City had asked for documentation from the Taxpayer during the audit process but no documentation was provided. Subsequent to the hearing, the Taxpayer provided documentation to support a lower amount of gross income during the audit period. After review of the

documentation, the City recommended the downward adjustment to gross income in the amount of \$400,502.01. This in turn would reduce the taxes due from \$14, 087.59 to \$6,828.56.

### **Taxpayer Position**

During March of 2001, *Mr. A* and *Mr. B* made a property division settlement as part of their divorce. From April 1, 2001, until June 21, 2002, *Mr. A* operated the restaurant at \_\_\_\_\_ Street. At that time, *Mr. A* abandoned the leased property. *Mr. B* assumed the location lease to avoid a possible legal action since she had co-signed the original lease. The Taxpayer argued that *Mr. B* was a “by-stander” in this matter that did not benefit from the business takeover. Further, there were no assets of the business. As a result of the above, the Taxpayer requested the City go after *Mr. A* and abate any assessment on the Taxpayer.

The Taxpayer also argued that the City had grossly overstated the gross income from the business. According to the Taxpayer, the business suffered greatly after the September 11, 2001 event. The Taxpayer estimated the delinquent sales tax obligation to be approximately \$6,270.23. Subsequent to the hearing, the Taxpayer provided additional documentation to the City to support the lower obligation.

### **ANALYSIS**

The Taxpayer and the previous owner had gross income from the restaurant located at \_\_\_\_\_ Street which was taxable pursuant to City Code Section 14-455 (“Section 455”). Since the Taxpayer failed to provide documentation during the audit process, the City’s use of a reasonable estimation was proper. Subsequently, after the Taxpayer provided post-hearing documentation to support a reduction in the gross income level, it was proper for the City to reduce the assessment to reflect more accurate information.

The Hearing Officer also concludes that the Taxpayer voluntarily assumed the location lease and the restaurant business from the previous owner and thus would be taxable, as a successor in business pursuant to City Code Section 13-6 (“Section 13-6”). Based on the above, the Taxpayer’s protest as a successor-in-business is denied while the protest to reduce the assessment to reflect more accurate information is granted.

### **FINDINGS OF FACT**

1. On October 22, 2003, the Taxpayer filed a protest of a tax assessment made by the City.
2. After review, the City concluded on October 24, 2003 that the protest was timely and in the proper form.
3. On October 29, 2003, the Hearing Officer ordered the City to file a response to the protest on or before December 15, 2003.

4. On November 5, 2003, the City filed a response.
5. On November 10, 2003, the Hearing Officer ordered the Taxpayer to file a reply on or before December 1, 2003.
6. The Taxpayer filed a reply on November 28, 2003.
7. On December 2, 2003, a Notice was issued setting the matter for hearing commencing on January 15, 2004.
8. Both parties appeared and presented evidence at the January 15, 2004 hearing.
9. On January 16, 2004, the Hearing Officer issued a letter indicating the Taxpayer would provide additional documentation requested by the City on or before January 29, 2004; the City would provide any recommendations/comments to the additional documentation as well as any legal arguments on or before March 1, 2004; and, the Taxpayer would provide any reply on or before April 1, 2004.
10. The Taxpayer provided additional documentation on January 27, 2004.
11. The City filed its recommendations and legal arguments on March 1, 2004.
12. On April 15, 2004, the Hearing Officer issued a letter indicating the Taxpayer had not filed a reply and as a result, the record was closed and a written decision would be issued on or before May 31, 2004.
13. **Mr. A** applied for a City Privilege License on May 31, 2001 for a restaurant located at \_\_\_\_\_ Street, and cancelled the license on June 23, 2002.
14. **Mr. A** did not file tax returns for the period August 2001 to June 23, 2002 and the City was unsuccessful in contacting **Mr. A**.
15. On June 24, 2002, the Taxpayer assumed the restaurant location lease to avoid a possible legal action since she had co-signed the original lease.
16. On August 27, 2003, the City mailed preliminary audit work papers to the Taxpayer.
17. The City estimated the monthly taxable revenues for the period August 2001 through June 23, 2002 and assessed the Taxpayer for taxes due in the amount of \$14,087.59 plus interest.
18. The City utilized the tax returns filed from May 2001 to July 2001 by **Mr. A** to make an estimate of the gross income for the audit period.
19. The City had asked for documentation from the Taxpayer during the audit process but no documentation was provided.

20. Subsequent to the hearing, the Taxpayer provided documentation to support a lower amount of gross income during the audit period.
21. After review of the documentation, the City recommended a downward adjustment to gross income in the amount of \$400,502.01.
22. The reduction in gross income reduced the taxes due from \$14,087.59 to \$6,878.56.

### **CONCLUSIONS OF LAW**

1. Pursuant to ARS Section 42-6056, the Municipal Tax Hearing Officer is to hear all reviews of petitions for hearing or redetermination under the Model City Tax Code.
2. Section 455 imposes the transaction privilege tax on the gross income derived from the restaurant business.
3. The Taxpayer voluntarily took over the restaurant business located at \_\_\_\_\_ Street.
4. The Taxpayer is liable for the taxes due as a successor in business pursuant to Section 13-6.
5. It is appropriate to reduce the original assessment to reflect the additional documentation provided by the Taxpayer.
6. With the exception of Conclusion of Law No. 5, the Taxpayer's protest should be denied.

### **ORDER**

It is therefore ordered that the October 22, 2003 protest of *ABC* Restaurant Inc. of a tax assessment made by the City of Phoenix is hereby partly denied and partly granted consistent with the Discussion herein including Conclusion of Law Nos. 5 and 6.

It is further ordered that the City of Phoenix shall revise its tax assessment to reflect taxes due in the amount of \$6,878.56 plus interest.

It is ordered that this Decision shall be effective immediately.

Jerry Rudibaugh  
Municipal Tax Hearing Officer